

**REMARKS**

The Applicants respectfully request reconsideration of the application in view of the following remarks. Claims 6, 7, 11-13, 15, 16, 21, 22, 24-26, 28, 30-35, 38-41, 43-55, 57-59, 61-69, 71-73 and 75-101 are pending. No claims have been amended.

The Applicants filed an Information Disclosure Statement on March 3, 2004. The Applicants respectfully request the Examiner provide an initialed Form 1449 for the IDS filed March 3, 2004.

The Action rejects claims 6, 7, 11-13, 15, 16, 21, 22, 24-26, 28, 30-35, 38, 39, 41, 43-50, 52-55, 57, 59, 61-63, 65-69, 71, 72, 76-98, 100 and 101 under as being unpatentable over U.S. Patent Application Publication No. 2004/0103439 to Macrae et al. ("Macrae '439 publication") in view of U.S. Patent No. 5,929,850 to Broadwin et al. ("Broadwin"). The Action rejects claims 40, 51, 58, 64, 73, 75 and 99 as being unpatentable over the Macrae '439 publication in view of Broadwin and U.S. Patent No. 6,335,736 to Wagner et al. ("Wagner"). The Applicants respectfully disagree.

The Macrae '439 publication is not prior art to the present application. Any rejection that relies even in part on the Macrae '439 publication should be withdrawn.

MPEP § 706.02(f)(1) sets forth steps for determining the § 102(e) date of the Macrae '439 publication. This section of the MPEP provides textual description, examples, and flowcharts. With reference to Chart 1 of MPEP § 706.02(f)(1)(III), the Applicants understand the § 102(e) date of the Macrae '439 publication to be determined through the following path:

- 1) "Is the reference a U.S. patent or U.S. application publication of an International Application (IA)?" No, the Macrae '439 publication is a U.S. application publication of a continuation, U.S. Patent Application Serial No 10/718,187.
- 2) "Is there an IA in the continuity chain for which a benefit is properly sought via §§ 120 or 365(c)?" Yes, there is a PCT application in the continuity chain.
- 3) "Was the IA filed on or after Nov. 29, 2000? – look at the international filing date." No, the PCT application was filed October 16, 1997.
- 4) "For a U.S. application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA." The filing date of the U.S. application that claimed the benefit of the PCT application is **September 30, 1999**.

September 30, 1999 is after the filing date of the present application. The Macrae '439 publication is not § 102(e) prior art to the present application.

The textual description in MPEP § 706.02(f)(1)(I) confirms this analysis. The Macrae '439 publication (indirectly) claims the benefit of an international application, and that international application was filed before November 29, 2000. [MPEP § 706.02(f)(1)(I)(C)(3).] The § 102(e) date of the Macrae '439 publication is "the actual filing date of the later-filed U.S. application that claimed the benefit of the international application" [MPEP § 706.02(f)(1)(I)(C)(3)(c)], September 30, 1999. The Macrae '439 publication is not § 102(e) prior art to the present application. [See also MPEP § 706.02(f)(1)(II), Examples 6 and 9.]

The Applicants further note that even if the application published as the Macrae '439 publication were to issue as a U.S. patent, the U.S. patent would still not be prior art to the present application under § 102(e). [MPEP §§ 706.02(f)(1)(I)(C)(3)(a), 706.02(f)(1)(II), Examples 6 and 9.]

The Macrae '439 publication is also not prior art to the present application under § 102(a). As a §102(a) reference, the effective date of the Macrae '439 publication is May 27, 2004.

The Macrae '439 publication is not prior art to the present application. Because the rejections of all of the currently pending claims rely in part on the Macrae '439 publication, the Applicants respectfully request withdrawal of the rejections of all currently pending claims.

### **CONCLUSION**


The claims in their present form should be allowable. Such action is respectfully requested.

### **REQUEST FOR INTERVIEW**

In view of the preceding remarks, the Applicants believe the application to be allowable. If any issues remain, however, the Examiner is formally requested to contact the undersigned attorney at (503) 226-7391 prior to issuance of the next communication in order to arrange a telephonic interview. This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By   
Kyle B. Rinehart  
Registration No. 47,027

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446